REMARKS

Claims 1-21 are pending. No claim has been amended.

I. Drawing Objection

The drawing is objected under 37 CFR § 1.83(a) as allegedly not showing every feature recited by the claims. Thus, Applicant attaches an amended drawing showing the container (ATTACHMENT I). The specification is also amended to reflect the drawing change. Containers are discussed in the specification and originally filed claims, and known in the art. Page 4, first paragraph of the specification discloses one container embodiment as a drinks can. Page 3, lines 30-34 discloses employing the insert with a conventional drinks can. Page 1, lines 30-32 discloses an insert piece, for use with a standard size drinks can, preferably has a volume of approximately 100ml so, when inserted in the standard size drinks can, there is space for at least 200ml of drink. Applicant respectfully presents no new subject matter has been added.

II. 35 USC § 102

Claims 1-3, 6-10, 13, 17, 18, 20 and 21 stand rejected under 35 USC § 102(b) as allegedly being anticipated by Jaeger (U.S. Patent No. 3,802,056). The Office Action asserts Jaeger teaches each feature recited by these claims. Applicants respectfully disagree.

A. "substantially constant diameter"

Claim 1 recites "wherein each section of the peripheral wall has a wall section of substantially constant diameter." However, no such structure is present or suggested by the disclosure of the unit 14 of Jaeger.

As described in the present specification at page 1, lines 23-29, Jaeger unit 14 has "a conical section which runs from their open end into a cylindrical section" (emphasis added). The Office Action cites Fig. 15 of the reference, showing an insert piece 40, which has a tapered section 44. Insert piece 14" (Fig. 15) also has a tapered portion 62. A section of the peripheral wall of both insert pieces 40, 14" of the reference has a continually changing diameter, which is contrary to the feature recited by claim 1. Thus, each section of unit 14 cannot have a "substantially constant diameter."

B. "two adjacent sections are connected to one another by an annular transition which is substantially perpendicular to the wall sections"

Moreover, the reference fails to teach or an annular transition connecting two adjacent wall sections, wherein the annular section is substantially perpendicular to the wall sections. Such an annular transition is shown at 4 of Fig. 1 of the present specification. Therein, it can be clearly seen that annular section 4 is perpendicular to wall sections 3 and 5.[1]

In contrast, Fig. 15 of the reference shows transition portion 50 of the insert piece 40 tapers and trends upwardly (apparently at about a 45° angle), such that it is not substantially perpendicular to the wall sections. The transition portion 66 of 14" is similarly oriented. By contrast column 12, lines 41-47, of Jaeger, referring to Fig. 40, a describes a different portion, namely, portion 242, as an annular ring portion, deposed generally perpendicular to the cylindrical portion 240. It thus seems that if transition portions 50 or 66 were in fact annular transitions substantially perpendicular to the wall sections, they would have been described as such.

Thus, Jaeger cannot expressly nor inherently anticipate claim 1.

C. Claim 19

Claim 19 recites the "the height of the insert piece is divided in half by the annular transition." As shown in Fig. 1 of the present specification, this claim describes the location of the annular transition to be at one-half the length of the insert piece. For example, wall sections 3 and 5 are of equal lengths, as defined by the annular transition 4. In contrast, annular sections 50 and 66 are shown as being significantly closer to one end

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[1] Claim 1 recites the transition as "substantially perpendicular." While the transition need not be perfectly perpendicular to either of the wall sections 3, 5, it must nevertheless be at least "approximately" perpendicular to the wall sections, allowing for a deviation from the "perpendicular." *Liquid Dynamics Corp. v. Vaughn Co.*, 69 USPQ2d 1595 (Fed. Cir. 2004).

of the insert piece, such that the insert piece is not divided in half. Thus, Jaeger does not teach nor suggest the feature added by claim 19.

D. No motivation to modify

Jaeger additionally lacks any motivation to make the necessary modifications to reach the presently claimed device. For example, Jaeger specifically teaches that the conical formation of the insert pieces is necessary to effectively cool the beverage. As described in column 8, line 63 - column 9, line 37, the contents of the can 101 (see e.g., Fig 26) are cooled by a coolant, e.g., Freon, which is released from insert 107 by a plunger 178 breaking a diaphragm 176 (see e.g., Fig. 30). The coolant enters into a space 200 between the two inserts and progresses along the length of the inner insert reaching the area between conical portions 44 and 62 after passing along cylindrical portions 128 and 126 (see e.g., Fig. 20). As described in column 10, lines 47-58 of Jaeger, as the coolant proceeds along to the cylindrical portion and conical portion (numbered 126 and 122 in Fig. 24) there is lesser rate of heat exchange occurring so that a larger heat exchange surface area is necessary relative to the amount of beverage. It is for this reason that the portions 122 and 124 (of Fig. 24) are conical shaped to maximize the heat transfer surface area and minimize the amount of beverage to be cooled once the coolant has already absorbed a lot of heat.

The skilled person is thus taught away from an insert piece with a peripheral wall comprising different sections wherein each section of the peripheral wall has a wall section of substantially constant diameter.

Also, Jaeger does not mention a desire to achieve a maximum level of rigidity for a given wall thickness so that, to obtain a predetermined level of rigidity, the thinnest wall thickness can be selected without the insert piece deforming under the pressure required (see page 2 of the present application). Jaeger in fact teaches away from the insert element being able to withstand the pressure of sterilization by stating at column 15, lines 7-12 that the coolant container be added to the product container after the product container has been filled, processed and sealed. There is thus no motivation for the skilled person to provide the insert piece with an annular transition which improves

rigidity and is eminently suitable for absorbing a certain deformation in the longitudinal direction of the insert piece without the wall sections being plastically deformed.

III. 35 USC § 103

Claims 4, 5, 11, 12 and 14-16 stand rejected under 35 USC § 103(a) as allegedly being unpatentable over Jaeger in view of Tenenboum et al. (U.S. Patent No. 6,267,110). However, based upon the § 102(e) date of Tenenboum et al. and the priority date of the present application, Applicant respectfully presents Tenenboum et al. is not a proper prior art reference. Specifically, Tenenboum et al. has a § 102(e) date of February 25, 2000, while the present application claims priority (through WO 01/21399) to Dutch Application No. 1012937, which was filed August 30, 1999. Thus, because the claims rejected herein are supported by the priority document (as explained by the table below) Tenenboum et al. cannot be used as a reference against these claims. A copy of a certified English-language translation of the priority document is provided as Attachment II.

The claims are supported as follows:

Present Claims	Support in Translation
1. An insert piece for a container holding a product which is to be heated or cooled, which insert piece defines a substantially elongate space which is intended to accommodate a heating or cooling means, the insert piece having a peripheral wall with a closed end and an open end, which open end is provided with an outwardly projecting rim for attaching to the container,	Claim 1
wherein each section of the peripheral wall has a wall section of substantially constant diameter,	Claim 2; Claim 10; Fig. 1; Page 3, lines 3-11
and two adjacent sections are connected to one another by an annular transition which is substantially perpendicular to the wall sections	Claim 2; Claim 10; Fig. 1; Page 3, lines 3-11
4. The insert piece as claimed in claim 1, wherein the insert is made from packaging steel	Page 4, lines 3-4

5. The insert piece as claimed in claim 1, wherein the packaging steel is coated with plastic	Page 4, lines 8-9
7. A container for a product which is to be heated or cooled, provided with an insert piece as claimed in claim 1, wherein the open end of the insert piece is provided with the outwardly projecting rim attached to the container	Claim 9 and page 5, lines 14-19
8. A process for forming an insert piece of Claim 1 for a container for a product which is to be heated or cooled, which insert piece is used to accommodate a heating or cooling means, and which insert piece is of elongate form with a peripheral wall and an open end and a closed end, wherein the insert piece is produced by deep-drawing in at least two deep-drawing steps, in such a manner that the peripheral wall of the insert piece is composed of two sections of different diameters	Claim 10
and the two adjacent sections are connected to one another by the annular transition which is substantially perpendicular to the wall sections.	Claim 2; Claim 10; Fig. 1; Page 3, lines 3-11
11. The container as claimed in claim 7, wherein the insert is made from packaging steel	Same as present claim 4
12. The container as claimed in claim 7, wherein the packaging steel is coated with plastic	Same as present claim 5
14. The process as claimed in claim 8, wherein the section which adjoins the closed end of the insert piece has a smaller diameter than the diameter of the section which adjoins the open end	Claim 3; Fig. 1
15. The process as claimed in claim 8, wherein the insert is made from packaging steel	Same as present claim 4
16. The process as claimed in claim 8, wherein the packaging steel is coated with plastic	Same as present claim 5

It is respectfully submitted claim 19 is not obvious in view of Jaeger for at least the distinguishing features of its base claim 1.

IV. Conclusion

Applicants respectfully request entry of the above amendments and passage of the application to allowance. If any issues remain which may best be resolved through a telephone communication, the Examiner is requested to telephone the undersigned at the local Washington, D.C. telephone number listed below.

Respectfully submitted,

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